

**BEFORE THE
CALIFORNIA PUBLIC UTILITIES COMMISSION**

Order Instituting Rulemaking to Consider
Modifications to the California Advanced
Services Fund.

Rulemaking No. 12-10-012
(Filed October 25, 2012)

**OPENING COMMENTS OF CALIFORNIA INTERNET, L.P. (U-7326-C) DBA
GEOLINKS ON PHASE II OF THE FEBRUARY 14, 2018 AMENDED SCOPING
MEMO AND ASSIGNED COMMISSIONER'S RULING**

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I. INTRODUCTION

California Internet, L.P. (U-7326-C) dba GeoLinks (“GeoLinks” or the “Company”) respectfully submits these opening comments on the Phase II Staff Proposal set forth in the February 14, 2018 Amended Scoping Memo and Assigned Commissioner’s Ruling (“Ruling”).

Headquartered in Camarillo, CA, GeoLinks is nationally recognized for its innovative Internet and Hosted Voice solutions. The Company’s proprietary ClearFiber™ product utilizes a combination of terrestrial fiber optic backhaul, carrier-grade full-duplex fixed wireless equipment, and FCC licensed spectrum to deliver ultra-reliable high-speed broadband Internet access via radio waves.¹

GeoLinks was the largest construction grant winner for California K-12 schools and libraries in both 2016 and 2017, providing highspeed broadband to nearly 30 rural school districts and surrounding communities throughout the state that previously had not had access to any high-speed broadband service. The Company hopes to leverage its expertise in connecting unserved areas of the state to apply for California Advanced Services Fund (“CASF”) funding in the coming year.

¹ For more information about fixed-wireless technology and GeoLinks’ Clearfiber™ network, visit <https://www.youtube.com/watch?v=V8GvGOKCpnk>

II. DISCUSSION

A. The Commission Should Allow Flexibility in How CASF Applicants Provide Project Location Data

In its proposal, Staff proposes that CASF Applicants provide, among other things, the following with respect to project location data:

- The geographic location of the project related key network equipment, such as: DSLAMs, wireless towers, router facilities, network interconnection, etcetera. (Format to be determined by Staff)²

In finalizing the format for such a requirement, GeoLinks urges the Commission to allow for flexibility in the provision of this information between the application and construction phases of the CASF process. GeoLinks recommends that for the application phase Staff require this information by census area from CASF applicants. Providing infrastructure location information by census area provides staff with mappable infrastructure data while ensuring maximum flexibility for network design. Especially for competitive providers that are not limited by fiber construction requirements, the exact locations for certain pieces of network infrastructure (i.e. towers or receivers) may shift during the construction phase to account for land procurement, leasing, permitting, topography and vegetation, etc. Moreover, requiring this information at a more granular level at the application phase may result in delays if an applicant has to seek approval of any changes, even if the resulting network functions exactly the same. For these reasons, GeoLinks urges the Commission to seek this information at a census area level as part of the CASF application process.

B. The Per Household Threshold for Ministerial Review Should be the Same Regardless of Technology Type

In the Proposal, Staff addresses the approval delays that have, to date, been commonplace in the CASF program.³ Specifically, Staff addresses that the majority of projects take several years before approval is granted, creating opportunities for new challenges and problems. To

² Ruling, Appendix C, at 9-10.

³ *Id.*, at 13.

streamline the approval process, Staff recommends ministerial review process for applications that meet certain criteria.⁴

As an initial matter, GeoLinks supports Staff's proposal to create a ministerial review process for certain projects. The Company believes that such a process will reserve Commission resources and ensure that broadband deployment to unserved areas is completed on a more expedited basis. In addition, GeoLinks believes such a process will encourage more participation in the CASF program as companies will no longer be faced with the open-ended uncertainty of when a project might get approved. However, GeoLinks asserts that the per household cost thresholds Staff proposes for this ministerial review process will thwart Staff's efforts to streamline the program and incentivize carriers to bid on these low-income areas.

As proposed, the process set forth for low-income communities creates a huge disparity between technology types. Specifically, Staff proposes allowing this streamlined process for fixed wireless projects only if proposed project costs are \$1,285 per household or less. However, for the same project area (and likely the same offered speeds, prices, customer service, etc.), Staff proposes an allowable project cost of \$15,650 per household for fiber builds – **more than 12x the amount allowed for fixed wireless projects**.⁵ Moreover, there is no limit proposed for satellite providers, assuming they are eligible to bid.

On its face, this discrepancy is contrary to the Commission's stated goal of administering the CASF program on a "technology neutral" basis.⁶ While not clear from Staff's proposal, GeoLinks believes these numbers may be based on amounts approved for projects in the past. However, these numbers should be used as a mechanism to reevaluate the per household costs the Commission has historically awarded to broadband providers, not as a method by which to hinder certain technology-types from bidding on a CASF-eligible area.

⁴ *Id.*, at 13

⁵ *See Id.*, at 14.

⁶ *Interim Opinion Implementing California Advanced Services Fund*, Decision 07-12-054 (rel. December 20, 2007), at 8: "The CASF shall be administered on a technology neutral basis by the Commission." *See also Id.* At 28: "CASF funding proposals will be reviewed based upon how well they meet the criteria for selection as set forth below, and, where applicable, compared with any competing claims to match the deployment offer under superior terms. *Such criteria should be evaluated on a competitively neutral basis.*" (*Emphasis added*).

For example, if a fixed wireless provider applies to provide high-speed broadband to households in a CASF-eligible, low-income area of the state for \$1500 per household, that fixed wireless provider should not be precluded from the ministerial process when a fiber-based project, that will likely offer the same speeds, would be eligible – and for potentially upwards of ***\$14,000 more PER HOUSEHOLD.***

The proposed price discrepancy gives fiber providers a huge advantage and will only serve to disincentivize competitive providers from submitting CASF applications for areas where the cost threshold might be more than \$1,285 per household. In addition, a provider that submitted an application for slightly more than the threshold for fixed wireless would run the risk of being beat out by a fiber provider offering to deploy service for 12x the cost because they can get approved in a shorter period of time under the ministerial process. This structure not only picks winners and losers in the CASF application process but encourages wasteful spending that could have been avoided if other technology types were given an equal opportunity for expedited application review. Certainly, as proposed, this discrepancy fails to meet the Assigned Commissioner’s stated goal to “consider appropriate administrative controls to ensure that funds granted to eligible applicants are administered efficiently and cost-effectively, consistent with the Account’s stated purposes and objectives.”⁷

Instead, GeoLinks urges the Commission to set a flat cost per household threshold for its ministerial review process that would apply to all CASF applicants, regardless of technology type. Not only will this flat per household amount simplify the review process, but it will set all service providers on equal footing for ministerial review, ensuring maximum participation in the CASF program and promoting more efficient use of CASF funds.

C. GeoLinks supports Staff’s Proposal to Initiate a Request for Proposal Process “High-Priority” Areas but Urges Staff to Reevaluate Whether These Areas Are Still CASF-Eligible

Staff proposes implementing a Request for Proposal (“RFP”) process for “high-priority” areas where no applications have been received. GeoLinks strongly supports Staff’s suggestion to implement an RFP process for these areas. However, in doing so, GeoLinks urges the

⁷ Ruling at 6.

Commission to direct Staff to reevaluate the priority areas to assess census blocks that are currently available for CASF funding.

Earlier this year, GeoLinks was in the process of finalizing a CASF Application for several localities within the Salinas Valley area, all of which are listed as priority areas on the Commission’s website.⁸ However, between the changes implemented by Assembly Bill (“AB”) 1665⁹ and new projects in the area (which were not previously reflected on the California Broadband Map), the area appears to be all but ineligible for CASF funding. And the areas that remain cannot be served by a non-incumbent carrier without requiring a huge cost per household. While GeoLinks has not analyzed all of the “priority areas” designated by the Commission, it stands to reason that a refresh of these areas may be necessary. With specific guidance and direction for eligible areas in conjunction with a streamlined, ministerial review process, GeoLinks believes that the RFP process will yield numerous bidders and revitalize broadband deployment efforts in these priority areas. Specifically, GeoLinks urges the Commission to update the California Broadband map to account for any changes that may impact high-priority areas (or any CASF-eligible areas), including awarded CASF grants, Commission-approved settlement agreements pursuant to merger transactions, other federal and state grant funding, etc., and to do so more expeditiously going forward

In addition, similar to the process recommended above, GeoLinks suggests that carriers be placed on equal footing with respect to eligibility to bid on these RFPs. Specifically, GeoLinks urges the Commission to score applications based on the same criteria, regardless of technology type, and suggests a flat per household threshold for ministerial review, applicable to all applicants.

D. The Commission Should Create Rules for Right of First Refusal Submissions to Avoid the Process Becoming a Mechanism for Blocking Competition

GeoLinks urges the Commission to implement rules to ensure carriers do not use the Right of First Refusal (“ROFR”) process to block areas where they have no intention to deploy

⁸ See [http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications - Telecommunications and Broadband/ConsortiaPriorityAreas\(1\).xlsx](http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/ConsortiaPriorityAreas(1).xlsx) (last visited April 12, 2018).

⁹ Chapter 851, Statutes of 2017.

broadband infrastructure. First, GeoLinks urges the Commission to implement rules that limit a carrier's ability to file multiple ROFR letters for the same area. If a carrier files an ROFR for an area, it has 180 days to either deploy broadband/ upgrade its existing facilities or seek an extension. If after the exhaustion of the initial 180-day period or any granted extension the provider has failed to deploy or upgrade its facilities as set forth in the ROFR, the carrier should not be allowed to re-bid the area in any subsequent round. Second, GeoLinks believes that repeated extensions are only reasonable if the delay is completely outside the control of the ROFR filer. Delays due to inability to secure funding, reasonably avoidable construction delays, etc. should not suffice. Lastly, the Commission should consider penalties for failure to never construct an ROFR area after seeking an extension such as preclusion from participating in the CASF program.

E. Connect America Fund Recipients Should be Subject to Mandatory Waiting Periods Before Becoming Eligible to Apply for CASF Funding.

As set forth in AB 1665, Connection America Fund Phase II ("CAF") areas are ineligible for CASF funding until July 1, 2020, unless the existing facility-based broadband provider has notified the Commission before July 1, 2020, that it has either completed or elected not to build its CAF deployment in the census block. In its Proposal, Staff seeks comment on the following:

1. How can the Commission incentivize existing facilities based broadband providers to build out their CAF II obligations in a timely manner?
2. How and what is the process for existing providers to notify the Commission before July 1, 2020, that it has either completed or elected not to build its CAF [project] to expand broadband service within identified census blocks?¹⁰

As an initial matter, in adopting any rules related to the treatment of CAF recipients, GeoLinks urges the Commission to remember that these recipients made commitments to the FCC in exchange for receipt of CAF funds. Specifically, these providers agreed that in exchange for the model-based support they would "deploy voice and broadband-capable networks to all supported

¹⁰ Ruling, Appendix C, at 16.

locations that are deemed ‘high-cost’ and not served by an unsubsidized competitor.”¹¹ If a CAF recipient fails to meet these commitments (either by only completing a portion of an area or not completing an area at all), the Commission should not allow them to game the system and benefit from CASF funding.

By way of example, recently Frontier Communications informed the Commission that it would not be pursuing a specific CAF area (Desert Shores).¹² The very next day, however, Frontier filed a CASF application for the exact same area.¹³ Based on Frontier’s CAF commitment, Staff flagged the Desert Shores area as ineligible for CASF funding. This blocked all other broadband providers from seeking CASF funding to serve the Desert Shores area.

Clearly, Frontier waited to announce that it would not be using CAF funding for Desert Shores until its CASF application was complete (since that filing occurred the next day). Meaning that Frontier not only knew in advance it would not be upholding its commitments under CAF but withheld that information from the Commission for its own benefit. This behavior should not be rewarded and is most certainly not in the public interest.

To avoid this gaming of the CASF program in the future, GeoLinks urges the Commission to subject CAF providers that bow out of their FCC commitments under the CAF program to a mandatory waiting period before they can apply for CASF funding for a previously blocked CAF area. Specifically, GeoLinks suggests a 90-day mandatory waiting period if notice is provided to the Commission before January 1, 2019 and a 180-day mandatory waiting period if notice is provided to the Commission after January 1, 2019 but before January 1, 2020. However, if a provider waits until after January 1, 2020, the Commission should completely preclude the provider from applying for CASF funds for the same area. Moreover, the Commission should consider subjecting any CAF recipient who waits until after January 1, 2020 to inform the Commission of its election not to complete its deployment commitments in a CAF area to a Rule 1.1 violation. Given the time necessary to plan and deploy a broadband network, if a recipient has not begun deployment or made significant steps towards deployment with only 6

¹¹ *Connect America Fund, et al. Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90 et al., FCC 14-54 (rel. June 10, 2014), at para. 60.

¹² Frontier notice “CAF II Census Blocks – Desert Shores” (Feb. 6, 2018).

¹³ Frontier CASF Broadband Infrastructure Grant Application – Desert Shores (Feb. 7, 2018).

months remaining before the July 1, 2020 deadline, it can be inferred that the recipient had no intention of deploying broadband to that area and withheld such information from the Commission constituting misleading “the Commission or its staff by an artifice or false statement of fact or law.”¹⁴

For these reasons, GeoLinks strongly urges the Commission to develop rules that preclude CAF recipients from gaming the CASF program in their favor.

F. The Commission Should Allow an Additional CASF Application Submission Period Each Calendar Year

In its Proposal, Staff seeks input on timing for CASF submissions, asking the following:

2. Should an additional CASF grant application opportunity be afforded following the July 31st ROFR completion dates, thereby permitting submission of applications every 180 days? How will this affect prioritization of projects?

GeoLinks supports an additional annual grant application opportunity for a number of reasons. First, this bi-annual submission process will maximize efficient administration of the CASF program. A new submission deadline every 6-months will help ensure that application review stays on track for expedited processing. Paired with the new ministerial processes that Staff has proposed, CASF application review will become more streamlined and allow for the assessment of a second round of applications within a calendar year.

Second, the bi-annual application deadline will incentivize more service providers to participate in the CASF program, as they can plan their CASF application(s) to align better with pre-planned company expenditures or resource allocations. For example, smaller companies may have finite network design and deployment resources to dedicate to large builds. If those resources are tied up in a large project for the first half of the year but not the latter half of the year, a company may be precluded from applying for a CASF grant until the next annual deadline. This could ultimately disincentivize the company to apply at all. However, if a bi-annual application process was implemented, these broadband providers would have the flexibility to time a CASF application in a way that best aligns with their resource allocation

¹⁴ Rule 1.1., Rules of Practice and Procedure.

plans. As the Commission seeks to incentivize more participation in the CASF program, GeoLinks believes a second annual submission deadline would further this goal.

G. The Commission Should Implement Technology Neutral Scoring Criteria

In its Proposal, Staff recommends revising certain scoring criteria to give greater weight to projects in areas that are “low-income” or “high-priority.”¹⁵ GeoLinks supports this shift in scoring criteria as a way to incentivize projects geared towards these areas. That said, GeoLinks asserts that staff should not assess points associated with pricing in the same way proposed in Section 1.7 of Appendix C, which places a \$1,285 limit per household on fixed wireless project proposals but a whopping \$15,650 limit (12x higher) per household for fiber-based projects for ministerial review, based solely on technology type.

GeoLinks urges the Commission to impose a review process that puts all providers on an equal footing to ensure competition amongst CASF applicants. Specifically, GeoLinks asserts that the Commission must ensure an apples-to-apples comparison when evaluating CASF applications (the total price/ offering regardless of technology) and not an apples-to-fiber comparison that gives more expensive business models a leg up for no reason other than these projects have traditionally been more expensive in the past. This will ensure that CASF projects costs stay low yet will translate to better use of funds and additional funds for additional projects.

III. CONCLUSION

Based on the foregoing, GeoLinks urges the Commission to adopt changes that ensure flexibility for competitive carriers, technology neutral administration of the program, incentives for participation, and prevent gaming of the program to block competition.

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¹⁵ Ruling, Appendix C, at 18.

Respectfully submitted,

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